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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No. 577

ARTHUR W. MITCHELL,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, FRANK O. LOWDEN, ET AL.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

Appendices to Brief for Appellant.

RICHARD E. WESTBROOKS,
Chicago, Illinois

and

ARTHUR W. MITCHELL, *Pro Se,*
Chicago, Illinois
Attorneys for Appellant.

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APPENDIX A.

STATUTORY PROVISIONS INVOLVED.

TITLE 8, U.S.C., Chapter 3, Section 41—CIVIL RIGHTS.

Section 41. Equal rights under the law. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for

the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other (R.S. par. 1977).

TITLE 8, U.S.C., Chapter 3, Section 43—CIVIL RIGHTS.

Section 43. Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress (R.S. par. 1979).

TITLE 28, Section 41, Sub. Div. 14, U.S.C.

Suits to Redress Deprivation of Civil Rights. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States or of any right secured by any law of the United States, providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States (R.S. Sec. 563, par. 12, Sec. 629, par. 16; Mar. 3, 1911, c. 231, sec. 24, par. 14, 36 Stat. 1092).

TITLE 28, U.S.C., Section 41, Sub. Div. 28.

Sec. 41, Subd. (28) *Setting Aside Order of Interstate Commerce Commission.* Twenty-eighth. Of cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission. (June 18, 1910, c. 309, Sec. 1, 36, Stat. 539; Mar. 3, 1911, c. 231, Sec. 208, 36 Stat. 1148; Oct. 22, 1913, c. 32, 38, Stat. 219.)

TITLE 28, U.S.C., Sec. 43.

Section 43. *Venue of Suits Relating to Orders of Interstate Commerce Commission.* The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the district where one of the petitioners in court has either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, c. 32, 38, Stat. 219.)

TITLE 28, U.S.C., Section 45.

(*Judicial Code,* Section 209). *District Courts; Practice and Procedure in Certain Cases.* The jurisdiction of the district courts of cases brought under subdivisions 27 and 28 of section 41 of this title, and sections 20 and 43 of Title 49, shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the district court or by the proper United States marshal or deputy marshal upon every de-

fendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court. In all other respects the practice and procedure shall conform as nearly as may be to that in like cases in a district court of the United States. (June 18, 1910, c. 309, Sec. 1, 36 Stat. 539; Mar. 3, 1911, c. 231, Sec. 209, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)

TITLE 28, U.S.C., Section 47.

Interlocutory Injunctions as to Orders of Interstate Commerce Commission; Appeal to Supreme Court. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be a circuit or district

judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit. In cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect

to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. (Oct. 22, 1913, c. 32, 38 Stat. 220.)

TITLE 28, U.S.C., Section 47-a.

Sec. 47a (*Judicial Code*, Section 210) Appeal to Supreme Court from final decree; time for taking; priority. A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, c. 231, Sec. 210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)

TITLE 28, U.S.C., Section 48.

Judicial Code, Section 211. Suits to be against United States; intervention by United States. All cases and proceedings brought under subdivisions 27 and 28 of section 41 of this title, and sections 20 and 43 of Title 49 shall be brought by or against the United States, and the United States may intervene in any case or proceedings whenever, though it has not been a party, public interests are involved. (June 18, 1910, c. 309, Sec. 4, 36 Stat. 542; Mar. 3, 1911, c. 231, Sec. 211, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 219.)

TITLE 49, U.S.C., Section 1, Par. 1.

Carriers Subject to Regulation. The provisions of this chapter shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment.

TITLE 49, U.S.C., Section 1, Par. 2.

(a) *Transportation Subject to Regulation.* The provisions of this chapter shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, * * *

TITLE 49, U.S.C., Section 1, Par. 5.

Just and Reasonable Charges Required: Classification of Messages, and Rates; Exchange of Services. All charges made for any service rendered or to be rendered in the transportation of passengers * * *, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof

is prohibited and declared to be unlawful; * * * *And Provided Further* * * *.

TITLE 49, U.S.C., Section 2.

Special Rates and Rebates Prohibited. If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers * * * subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation * * * under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful. (Feb. 4, 1887, c. 104, Sec. 2, 24 Stat. 379; Feb. 28, 1920, c. 91, Sec. 404, 41 Stat. 479.)

TITLE 49, U.S.C., Section 3, Par. 1.

Preferences: Interchange of Traffic; Terminal Facilities.

(1) *Undue Preference or Prejudices Prohibited.* It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, * * * in any respect whatsoever or to subject any particular person, * * * to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (As amended Aug. 12, 1935, c. 509, 49, Stat. 607.)

TITLE 49, U.S.C., Section 4.

Duty to Furnish Transportation and Establish Through Routes Division of Joint Rates. It shall be the duty of every common carrier subject to this chapter engaged in the transportation of passengers * * * to provide and furnish such transportation upon reasonable request there-

for, and to establish through routes and just and reasonable rates, fares and charges applicable thereto, and to provide reasonable facilities for operating through routes * * *; and in case of joint rates, fares or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this chapter participating therein which shall not unduly prefer or prejudice any of such participating carriers.

TITLE 49, U.S.C., Section 13, Par. 1.

Section 13. *Complaints to and Investigations by Commission.*—(1) *Complaint to Commission of Violation of Law by Carrier.* Reparation: Investigation. Any person, * * * complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

TITLE 49, U.S.C., Section 13, Par. 4.

(4) *Duty of Commission Where State Regulations Result in Discrimination.* Whenever in any such investiga-

tion the commission, after full hearing, finds that any such rate, fare, charge, * * * regulation or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons * * * in interstate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful it shall prescribe the rate, fare, or charge * * * thereafter to be charged, and the * * * regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, * * * regulations, and practices shall be observed while in effect by the carriers parties to such proceedings affected thereby, the law of any State or the decision or order of any State Authority to the contrary notwithstanding. (Feb. 4, 1887, c. 104, Sec. 13, 24, Stat. 383; June 18, 1910, c. 309, Sec. 11, 36 Stat. 550; and Feb. 28, 1920, c. 91, Sec. 416, 41 Stat. 484.)

TITLE 49, U.S.C., Section 15, Par. 1.

Determination of Rates, Routes, Etc.; Routing of Traffic; Disclosures, Etc.—(1) *Commission Empowered to Determine and Prescribe Rates, Classifications, Etc.* Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property or for the transmission of messages as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such

carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

TITLE 49, U.S.C., Section 15, Par. 2.

(2) *Orders of Commission.* Except as otherwise provided in this chapter, all orders of the commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED.

ARTICLE I, Section 8, Clause 3, UNITED STATES CONSTITUTION.

Section 8. The Congress shall have Power * * *

To regulate Commerce with foreign Nations, and *among the several States*, and with the Indian Tribes."

ARTICLE I, Section 10, Clause 1, UNITED STATES CONSTITUTION.

Section 10. No State shall * * *

Pass any law impairing the obligation of Contracts * * *."

ARTICLE IV, Section 2, Clause 1, UNITED STATES CONSTITUTION.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

ARTICLE VI Clause 2, UNITED STATES CONSTITUTION.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

FOURTEENTH AMENDMENT TO CONSTITUTION OF UNITED STATES, Sections 1 and 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

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APPENDIX B.

SEPARATE COACH LAW OF THE STATE OF ARKANSAS.

(Pope's Digest, Chap. XX, Sections 1190 to 1201.)

EQUALITY OF ACCOMMODATIONS.

1190 All railway companies carrying passengers in this state shall provide equal but separate and sufficient accommodations for the white and African races by providing two or more passenger coaches for each passenger train; provided, each railway company carrying passengers in this state may carry one partitioned car, one end of which may be used by white passengers and the other end by passengers of the African race, said partition to be made of wood, and they shall also provide separate waiting rooms of equal and sufficient accommodations for the two races at all their passenger depots in this state.

Exception as to street cars.

1191 The foregoing section shall not apply to street railroads. In the event of the disabling of a passenger coach, or coaches, by accident or otherwise, said company shall be relieved from the operation of this act until its train reaches a point at which it has additional coaches.

Passengers to occupy places assigned.

1192 No person or persons shall be permitted to occupy seats in coaches or waiting rooms other than the ones assigned to them on account of the race to which they belong; provided, officers in charge of prisoners of different races may be assigned with their prisoners to coaches where they will least interfere with the comfort of other passengers; provided, further, that Section 1190 shall not apply to employees of a train in the discharge of their duties, nor shall it be construed to apply to such freight trains as carry passengers.

Separate sleeping and chair cars.

1193 Carriers may haul sleeping or chair cars for the exclusive use of either the white or African race separately, but not jointly.

Short Lines.

1194 On all lines of railway less than thirty miles long, passenger coaches may be divided by partition.

Duty of Officers.

1195 The officers of such passenger trains and the agents at such depots shall have power, and are required to assign each passenger or person to the coach or compartment or room used for the race to which such passenger or person belongs.

Penalty.

1196 Any passenger or person insisting on going into a coach or compartment or room to which by race he does not belong shall be liable to a fine of not less than ten dollars nor more than two hundred dollars, and any officer of any railroad company assigning a passenger or person to a coach or compartment or room other than the one set aside for the race to which said passenger or person belongs shall be liable to a fine of twenty-five dollars.

Duty of Passenger.

1197 Should any passenger refuse to occupy the coach or compartment or room to which he or she is assigned by the officer of such railway company, said officer shall have the power to refuse to carry such passenger on his train, and should any passenger, or any other person not passenger, for the purpose of occupying or waiting in such sitting or waiting room not assigned to his or her race, enter said room, said agent shall have the power, and it is made his duty, to eject such person from such room,

and for such acts neither they nor the railway company which they represent, shall be liable for damages in any of the courts of this State.

Railroad's noncompliance—Penalty.

1198 All railway companies that shall refuse or neglect to comply with the provisions and requirements of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction before any court of competent jurisdiction, be fined not less than one hundred dollars nor more than five hundred dollars, and every day that such railway company shall fail to comply with the provisions of this act, and every train run in violation of the provisions hereof, shall be a separate offense; and any conductor or other employees of such passenger train having charge of the same or any agent at such depot who shall refuse or neglect to carry out the provisions of this act shall, on conviction, be fined not less than twenty-five dollars nor more than fifty dollars for each offense.

Posting law.

1199 All railroad corporations carrying passengers in this State, other than street railroads, shall keep this law posted up in a conspicuous place in each passenger coach and waiting-room.

Races defined.

1200 Persons in whom there is a visible and distinct admixture of African blood shall, for the purposes of this act, be deemed to belong to the African race; all others shall be deemed to belong to the white race.

Freight Trains.

1201 The railroad companies shall not be required to furnish separate coaches in freight trains for the white and African races. Act February 21, 1893.

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APPENDIX C.

ABSTRACT OF EVIDENCE ON BEHALF OF THE COMPLAINANT.

ARTHUR W. MITCHELL, the complainant, testified as follows: My home address is 3806 South Parkway, Chicago. I am a lawyer, and member of the Congress of the United States. Have been a member of Congress since the 3rd of January, 1935, and am now serving my second term in Congress (R. 70).

On April 20, 1937, I was in Chicago (R. 70). I left Chicago on a trip to Hot Springs, Arkansas on said date. I made personal arrangements for that trip during the day of the 19th or 20th. I called the Illinois Central Railroad office and made reservations for the trip. I made an effort to secure a bedroom from Chicago to Hot Springs. They did not have a bedroom available for the complete trip. I was provided with a bedroom over the Illinois Central from Chicago to Memphis, Tennessee.

I bought a first class round trip ticket, a part of which ticket I have now in my possession, that is the return part of the ticket which I did not use after the happening of this incident. This is the return part of the ticket which I bought to Hot Springs, Arkansas from Chicago for which I bought a bedroom from Chicago to Memphis. I have the stub for that bedroom.

(R. 71) Before I arrived in Memphis, knowing that the car I was in would not continue to Hot Springs, Arkansas, I was informed that there was a car attached to the

train on which I was riding that would go to Hot Springs I had the porter on the particular car which was enroute to Hot Springs to come back to my reservation on the car in which I had traveled to Memphis (R. 71). I was at this time perhaps eight or ten miles out from Memphis

The porter took my baggage consisting of two suit cases a large hand bag, brief case, and small hand bag, rain coat, top coat and umbrella and conveyed them to a good seat in the car that would go to Hot Springs, and assigned me to that car. At the time I purchased my railroad ticket I paid $27.70 for the railroad ticket and made a memorandum of the charges. I called for a first-class ticket and that was what the agent of the Illinois Central Railroad Company at Chicago sold me. It is marked first class. It was a first class round trip ticket from Chicago to Hot Springs, Arkansas.

The return portion of the ticket read by way of Memphis, Tennessee, returning over the Rock Island and Illinois Central to Chicago (R. 71).

(The return portion of the first class round trip ticket purchased by the complainant in Chicago was marked Complainant's Exhibit 1 for identification.)

Examiner Disque: He has never turned that in for refund, has he?

Mr. Westbrooks: No, he has not. We are still entitled to refund.

(Exhibit 1 for identification was then offered in evidence as Complainant's Exhibit 1 and there being no objection the same was received in evidence and a photostatic copy of the exhibit was filed in lieu of the original.) (R. 204-A.)

The Witness (continuing): I purchased and paid $7.50 for the Pullman ticket and I had to pay an additional

$1.65 because I occupied the bedroom alone. This money for the Pullman ticket was paid at the Illinois Central station to the same agent of the Illinois Central Railroad Company to whom I had paid the money for the first class round trip railroad ticket.

Both tickets were purchased in Chicago, Illinois (R. 73), the total amount paid by me to the ticket agent of the Illinois Central Railroad Company at the Illinois Central Railroad station in Chicago was $36.85, and these are the figures of the agent made on this envelope which he gave me at the time I purchased both tickets.

(Complainant's Exhibit 2 marked for identification was the passenger's coupon or stub for Pullman accommodations from Chicago to Memphis, Tennessee.)

The Witness (continuing): The original railroad ticket purchased by me is No. C-2649 and is the unused portion of the ticket from Hot Springs to Memphis and from Memphis to Chicago. The Pullman ticket is No. 951 and reads from Chicago to Memphis (R. 73), Compartment C, Car No. 227, for one passenger, marked April 20, 1937.

(Complainant's Exhibit 2 was received in evidence.) (R. 204-B.)

The Witness (continuing): When I said I had purchased a bedroom, that was Compartment C as was indicated by this ticket (Complainant's Exhibit 2). The accommodations used by me from Chicago to Memphis, Tennessee in the Pullman car was Compartment C.

The $1.65 extra that I paid was in excess of the round trip ticket which cost $27.70.

After I had paid for my railroad ticket and Pullman accommodations I occupied the compartment in the Pullman car on the Illinois Central Railroad until the train

upon which I was riding was about ten miles from Memphis, Tennessee. There were other first class passengers riding in the same Pullman car in which I occupied the compartment.

I had the porter on the Pullman car on which I was riding get the porter on the Pullman car which was going through to Hot Springs and have a reservation made from Memphis to Hot Springs. The porter on the car in which I occupied the compartment had told me that the through Pullman car to Hot Springs, Arkansas, and which was attached to the train on which I was riding, would be in charge of that porter as there was no Pullman conductor he would go through to Hot Springs.

The porter on the through Pullman car to Hot Springs came back to the compartment occupied by me when the train on which I was riding was about eight or ten miles from Memphis and before we had reached Memphis, Tennessee, that is on the through Pullman car to Hot Springs, Arkansas (R. 75), said that he had "plenty of space in the through car." He made two or three trips from the through Pullman car to the Pullman car in which I was riding and conveyed all of my baggage to the through Pullman car destined for Hot Springs, Arkansas, and which was attached to the train on which I had left Chicago.

The porter on the Hot Springs Pullman car then took me to the through Pullman car and assigned me to a space which he told me I could occupy. He said he would take up the fare as soon as we had left Memphis.

I left Chicago on Train No. 3 about 6:05 P. M. and arrived in Memphis, Tennessee the next morning around

eight o'clock. Train No. 3 is a daily train called the "Louisiane."

(Complainant's Exhibit 3 was marked for identification. It is one of the folders, time tables and schedules issued by the Illinois Central Railroad Company.) (R. 76, 205-207).

The Witness (continuing): Complainant's Exhibit 3 is similar to one of the folders I received at the Illinois Central station in Chicago at the time I purchased my ticket. It is a time table issued December 31, 1936.

(Exhibit 3 was admitted in evidence and shows that the Daily Louisiane left Chicago at 6:05 P. M. for Little Rock, and Hot Springs, Arkansas. Page 2 shows that this train arrives in Memphis, Tennessee at 8:20 A. M. (R. 76) and connects with the Chicago, Rock Island and Pacific Railroad at Memphis, Tennessee with Train No. 45 which leaves Memphis, Tennessee daily at 8:30 A. M. and is due to arrive in Hot Springs, Arkansas at 1:05 P. M. It further shows the equipment of Train No. 3 on page 5. The equipment consisted of sleeping cars, Chicago to New Orleans and Houston, Texas, 10-section drawing room connecting with Southern Pacific No. 3, New Orleans to Houston; Chicago to Hot Springs, Arkansas, a 10-section, 2-compartment drawing room which connects with the Rock Island No. 45 at Memphis, Tennessee for Hot Springs, Arkansas; also Cincinnati and Louisville to New Orleans, a 10-section, 1-compartment drawing room, connecting with Baltimore and Ohio No. 63 at Cincinnati and Louisville; Pullman sleeping cars, air conditioned diners, air conditioned buffet lunch car, radio, Chicago to New Orleans; coach cars air conditioned, chair cars, Chicago to New Orleans, air conditioned; all regularly assigned cars on this train were air conditioned.) (R. 76).

The Witness (continuing): The Pullman car in which I rode out of Chicago was in accordance with the tickets

which I had purchased and the accommodations were first class. The Pullman car to which my baggage had been removed just before I reached Memphis, and to which I had been assigned by the Pullman porter, was enroute to Hot Springs, Arkansas. The description of the Hot Springs Pullman car was described by you when you read the booklet (Exhibit 3). It had several sections and a drawing room. It had a smoker for men, and running water. I went into the smoker and smoked. It had all the accommodations of the Pullman car except bedrooms (R. 77). This Hot Springs car had sections. The upholstering in the Pullman car to which I was transferred compared favorably with the upholstering of the Pullman car from which I was transferred. The upholstering was clean. There was clean linen and everything in the way of accommodations that Pullman cars ordinarily carry. There was porter service in both Pullmans. They were both air conditioned.

There was soap such as Pullman cars ordinarily use, of high quality (R. 78). The toilets were clean. There was running water in the toilets and the washbowls. There were clean towels, hot and cold water, and mirrors. Both Pullman cars contained water for flushing purposes in the toilets. I use Pullman cars quite often and both Pullman cars were equipped the same as all Pullman cars I have had occasion to use. I am describing the Pullman car in which I rode from Chicago to a few miles before we reached Memphis, and the Pullman car into which I was transferred just before we reached Memphis.

There were no obnoxious odors in the toilets as they were properly disinfected. I rode in the Pullman car enroute to Hot Springs, Arkansas, until after the car left Memphis, Tennessee (R. 78). After we left Mem-

phis, Tennessee and had gotten a little distance towards Hot Springs, Arkansas, the conductor of the train and the Pullman porter came to me.

I offered my first class railroad ticket and the train conductor received the ticket, tore off a piece of it and told me at that time that I could not ride in that Pullman car in which I was riding. The conductor said to the porter: "This man can't ride in this car." This was the train conductor on the Rock Island Railroad.

After we had left Memphis, Tennessee and crossed into Arkansas, we had gone a distance of seven miles into the State of Arkansas. After the train conductor told me I could not ride in the Pullman car in which I was riding I thought it might help the situation by telling him who I was, and said: "I am Mr. Mitchell, serving in the Congress of the United States" (R. 79).

The train conductor said, "It don't make a damn bit of difference who you are as long as you are a Nigger you can't ride in this car."

The Pullman porter was doing all he could to arrange for my transportation in the Pullman car. The conductor in a very arrogant and nasty manner said I had better be gone when he came back. Realizing that I was in the State of Arkansas and that sometimes persons arrested are not kept in jail for trial but are taken from the jail and lynched, I decided not to create any disturbance.

When the porter returned I requested that he talk with the train conductor and see if arrangements could not be made to permit me to ride in the smoking room of the Pullman car in which I was riding. There was nobody occupying the smoking room of the Pullman car.

There were at least four or five sections in this Pullman car in which I was riding which were unoccupied (R. 80). There were one or two other people riding in the Pullman car. There was a white man to the right of me and in front of me who gave some attention to the controversy. He did not say anything about it. The train conductor had used abusive language to me in the presence of the other passengers in this Pullman car. The other passengers heard what was being said and saw the entire transaction.

The Pullman car in which I was riding was not crowded. After riding in this Hot Springs Pullman car for about ten or fifteen miles in the State of Arkansas the Pullman porter returned and said, "Well, I just can't do anything with this man." (Meaning the train conductor.) "He says you can't ride." The porter was referring to the train conductor. The porter then said, "The train conductor says you can't ride in the smoker of this Pullman car." The Pullman porter stated that he knew who I was but he was helpless.

The conductor told me that in Arkansas they would put both of us in jail and fine us $50 apiece if I rode in the Pullman car which provided first-class accommodations (R. 80).

Under the threat of being thrown in jail for receiving first-class accommodations for which I had paid, I was compelled to leave the Pullman and ride in the Jim Crow car to complete the journey to Hot Springs, Arkansas. My baggage remained in the Pullman car until the train reached Hot Springs. I was deprived of the use of all of my baggage until the train reached Hot Springs.

The train conductor after taking up part of my first-class ticket, did not offer to make any refund after I had

been compelled to accept second-class accommodations. The conductor had no business to tear my ticket as he was only supposed to punch the ticket and return it to me.

About halfway to Little Rock, Arkansas, he returned the torn portion of my ticket and said, "Of course, this ticket entitles you to have first-class accommodations but under the law of the State of Arkansas you can't have them, and they have a right to give you back the difference between the price of the ticket and a regular coach ticket" (R. 81). The train crews changed at Little Rock and the piece of ticket which the first conductor had torn off and returned to me was taken up by the train conductor in charge of the train from Little Rock to Hot Springs. I offered to pay for the extra accommodations, that is, the seat in the Pullman car and I had the money in my hand when I offered the ticket to pay for this Pullman accommodation on to Hot Springs, and they refused to accept it.

Although I had a first-class ticket and was entitled to first-class accommodation he told me I would have to ride in the Jim Crow car. He told me that before I was put out of that Pullman. I protested about being put out of the Pullman car and he threatened to have me arrested (R. 81).

The Jim Crow car was an old car up next to the engine, in front of all the other passenger cars. As I remember it it was into three, or into two compartments. A part of it was used for smoking passengers, a small section of it; separated by partitions, and by a door. I don't remember whether it was a swinging door, or just an ordinary door; and a separate section of this car was used for non-smoking passengers, men and women. The car was in filthy condition. It was old and poorly ventilated; no linen of any kind; no running water; a filthy toilet that emitted obnoxi-

ous odors; no wash bowl or any convenience where a man or a woman could wash their hands; no towels or linen of any kind; no soap, offensive smelling spittoons; part of this Jim Crow car was used by the conductor; he used two seats of it for his office. In fact, he and his flagman, his white flagman, used two seats of that part—not the part that was set aside for smokers, but the part that was set aside for the non-smoking passengers. He rode just across the aisle from where I sat all the way into Little Rock (R. 82).

The ventilation of the Jim Crow car was the type that they had in the old fashioned cars. You could get ventilation—they had some arrangement for ventilation at the top; it was not air-conditioned at all. That car was built before they knew anything about air-conditioned cars, I think. There was neither hot nor cold water for use in that part of the car, in the Jim Crow car, where I was compelled to ride. If there was any water for flushing the toilet the toilet was out of commission and could not be flushed that morning, because it was giving off a terrible odor. It might have been due to something caught up above. I don't want to say it wasn't; my recollection isn't clear on that, but I know it wasn't possible to flush it that morning. The toilet in the Jim Crow car was not flushed out at all from the time I went in there (R. 82). It was filled with offal. One or two ladies were in that portion of the Jim Crow car where I was. This little Jim Crow section wasn't crowed at any time. I believe they had separate toilets for men and women in this Jim Crow car. Ordinarily they do not. In a great many of them, in the south, they do not have them separated. I was down south two weeks ago—

As to this one, I am not certain whether there were two toilets or one. I know there was only one in the compart-

ment where I was riding. There might have been one in the little section set off for smoking passengers (R. 83). In the compartment in which the ladies were riding there was only one toilet. The smoking compartment of this same car was used as a smoker for colored passengers. There were white in it, too, but I think the purpose of it was—it was designated for colored, but there were white riding in it. They had a sign I think "For Colored." The train conductor had charge of that train from Memphis to Little Rock.

I recognize what you show me as Complainant's Exhibit 4, as the folder given me by the Rock Island which is a time table corrected January 24, 1937 (R. 84). That covers that train service.

(Complainant's Exhibit 4, being a Rock Island time table corrected January 24, 1937, admitted in evidence.) (R. 84, 207-210).

I was not permitted to ride in the observation parlor car as I should have been permitted according to page 6 of the Rock Island time table (R. 85). I had the fare and was ready to pay it and offered to pay it for this permission. I was ready and willing and able to pay for and ride in the first-class coaches or cars. I saw other first-class passengers riding in them and they were all white people. I did not see any colored person at all riding in that observation car as passengers. They have a sleeping car from Memphis to Hot Springs, ten sections, one drawing room and two compartments, from Chicago, Illinois Central No. 3 (R. 85). That was the car I was ejected from. I did not see any colored passengers in that car. I was told by the conductor that they could not ride in it, and because I was colored, I could not ride in it. And that was the only reason he told me that I could not ride in

ere. Absolutely because I was colored. He said this: e said, "The law of Arkansas has made it a crime for a egro to ride in a car of that type, in the presence of white eople; and that they would have to ride in compartments, r drawing rooms; that they couldn't ride in the car." his car that I was in, as a further description of it, that , the car I was ejected from was of the modern type, ith those separations between the sections. It was not ne old type, where they used to put up ordinary wooden ards between the sections when they got ready to make wn the berths (R. 86).

It was one of the modern steel cars with these sections hat stay permanently fixed, with these separations, or ose partitions, they are permanently fixed between the ctions; and I always rode in a section. I was trying to y a section at the time when they ejected me, so I uldn't have contact with anybody else.

(Complainant's Exhibit 4 shows that "passengers holding coach tickets (not special coach) who desire to use sleeping car or parlor car have their rail tickets made valid for passage in sleeping car or parlor cars, on payment of difference between the one way first-class rail fare and the one way coach fare" (R. 86-87). Additional fare will be charged for the service of the sleeping and parlor cars. "Tickets designated 'special coach' will not be honored in sleeping or parlor cards" (Exhibit 4, page 12).)

The Witness (continuing): I arrived in Hot Springs, Arkansas, about 1:00 o'clock P. M. (R. 87).

(Page 32, Exhibit 4, also advertises the fact that coach tickets may be changed to first-class tickets. Exhibit 4, page 33, shows the Pullman car rates and provides that if a person has only one ticket, an extra fare is charged for occupancy of a compartment.)

When I was ejected from the sleeping car, a first-class accommodation, I was very sick and had been advised by my physician that I was suffering from low blood pressure (R. 88). We had been in a terrible fight in Washington, over the passage of Anti-Lynching Bill, and I was going to Hot Springs, for the purpose of building up my health. At the time I left Washington, D. C., I was sick and the records will show that I was excused because of illness (R. 38). I informed the train conductor of the illness before I was ejected. I arrived in Hot Springs in the Jim Crow car used for the transportation of persons holding second-class tickets, although I had paid for a first-class fare and accommodations. I remained in Hot Springs for about sixteen or seventeen days during which time I went down to the station and looked at Train 45 more than a half dozen times. It was a sort of custom for the patients at the hotel and bath house where I was stopping to visit the station on the arrival of this train to see who was coming to Hot Springs. That is, the new arrivals. I saw the Pullman cars used by first-class passengers attached to this train. I did not see any colored people riding as passengers in those first-class cars, that is, Pullman cars on the Rock Island (R. 89). The Rock Island refused me a ticket to return to Chicago, I mean, the agents of the Rock Island, in Hot Springs, refused to sell me first-class accommodations in the Pullman car from Hot Springs to Chicago, and that is why I have this unused portion of the first-class ticket which I purchased in Chicago, and I returned over the Missouri Pacific by paying first-class railroad fare and the additional charges for Pullman service. I have the unused portion of my ticket photostated (R. 89).

The condition of the car in which I saw the colored passengers riding, that is the Jim Crow car, was the same as I have heretofore described and was an antiquated railroad

car used for diversity purposes. The upholstering was very poor and worn and there were no towels. In the first-class car they have white towels on the back of the seats; they have them in all the Pullmans and in some of the coaches, but not in the Jim Crow car. In fact, there is no effort made by this railroad company to give Negroes equal accommodations. I saw the same kind of a Jim Crow car come into Hot Springs, Arkansas, on that train (Train 45) each day I was there and I have been observing the same condition for the past twenty-five years, there has been no change worth speaking of during that time. Not only have I been there and seen it, but I have been riding in it for that length of time as late as two weeks ago (R. 90).

I have a suit filed in the Circuit Court of Cook County against each of the defendants in this case, No. 37-C-5529 (R. 90-91). Exhibit 5, for identification, is an identical copy of the verified answer filed by Frank O. Lowden *et al.*, in the Circuit Court.

(It was stipulated that Paragraphs 16, 17 and 18 of the answer be read in evidence in this proceeding (R. 92). Paragraph 16 admits that the complainant was riding in the Pullman and was ejected by the train conductor; that the Pullman car was occupied by passengers of the white race; that the drawing rooms and compartments in the Pullman car was wholly occupied by other passengers; that the conductor was compelled under the laws of Arkansas, to assign plaintiff who was believed to be a colored person to this Jim Crow car (R. 93). Paragraph 17, claims that the conduct of the train conductor in compelling the complainant who had paid a first-class fare, to ride and accept second-class accommodations was in pursuance of the Separate Coach Law of Arkansas (R. 93).

Paragraph 18 *admits that the plaintiff was charged and paid for first-class fare from Memphis to Hot Springs, but that the defendants, Frank O. Lowden, et*

al., trustees of the Rock Island Railway Company, did not furnish the facilities and accommodations to the plaintiff for which the plaintiff paid and which was furnished other first-class passengers on the same train paying the same fare. It further admits that the plaintiff was overcharged the sum of $3.74 which was retained by the Rock Island.) (Emphasis supplied.)

When the porter on the Hot Springs sleeping car took me in the Hot Springs car he informed me that the drawing room was engaged and occupied as far as Memphis, Tennessee, and if the drawing room was not taken out of Memphis, I was to be given the drawing room upon paying the extra fare, which I was ready, willing and able to do (R. 93-94). He also told me that if the drawing room was engaged from Memphis to Hot Springs I could occupy a seat in the Hot Springs sleeping car from Memphis to Hot Springs. I rode about ten miles in this Hot Springs car with my baggage in a seat before I reached Memphis, and I remained in the same section until we had reached about fifteen miles the other side of Memphis, going toward Little Rock. Each section of this car had partitions and was the same as the modern Pullman cars are built.

(It was stipulated between the complainant and the defendant Pullman Company that at the time the complainant was ejected from the Hot Springs Pullman car by the train conductor that there were vacant and unoccupied seats in the Pullman car) (R. 95-96).

THOMAS J. PRICE, a witness for the complainant, testified (R. 97): I live in 3812 South Parkway, Chicago, Illinois. Have lived there about ten years. I have been engaged in the practice of law about thirty years, twenty years of that time I have spent in Little Rock, Arkansas. I am familiar with the transportation furnished by the Rock Island System as I had a newspaper called the "Ar-

kansas Times," and used scrip on the Rock Island Railroad for many years (R. 97). I am quite familiar with Train 45 which runs from Memphis, Tennessee, to Little Rock and Hot Springs, Arkansas. I am familiar with the class of facilities, service and accommodations furnished to colored people on that train, also, the accommodations and facilities on that train furnished to white persons as first-class passengers. The Rock Island had three types of car service, for Negro passengers. A car that they divided up in three sections, with black leather upholstery (R. 100). They had another combination in which they put the colored people next to the baggage, that was divided into two sections, a smoker and another section. They had a car divided into sections with ordinary upholstery, not a chair car. The last time I rode on the Rock Island Railway was about eleven months ago when I made these observations. From 1908 up to about eleven months ago I rode all over the State of Arkansas on the Rock Island Line. These conditions which I was describing have been existing during the period of time last mentioned by me. The accommodations furnished for all Negro passengers were not anywhere up to the accommodation furnished the white passengers (R. 101). I have ridden in the cars furnished white passengers and received the accommodations and facilities and also in the cars and accommodations furnished the colored passengers. On one occasion I went in the Jim Crow car. Seeing the car was dirty with peanuts and tobacco juice all over it, I went into the other coach where white passengers were riding. In the Jim Crow car there was a sign "For Negroes or For Colored," in the other car, there was a sign "For White." There were Negroes riding in the car where the sign read "For White."

In the Jim Crow car the ladies and men used the only toilet in the place, that is, the same toilet as there was

no other toilet in the car. There was no running water in that toilet to flush the hopper, no towels nor any washbowl in the Jim Crow car (R. 101). The Jim Crow car was usually covered with railroad dust from the engine and the toilet was filthy.

In the car or cars occupied by white passengers there were clean towels for use of the passengers, clean covers over the back of the seats or chairs, everything was nice and clean; good air circulation, washbowls, towels, soap and separate toilets for men and women. I always paid a first-class fare when I made the trips on the Rock Island (R. 102).

EDWARD H. CAREY, for the complainant, testified (R. 103):

I live at 4252 Vincennes Avenue, Chicago, Illinois; have been a resident of Illinois for seventeen years. Lived in Little Rock, Arkansas, for twelve years before coming to Chicago. Have used the Rock Island Railway for transportation and traveled extensively from Arkansas throughout the South from 1910 to 1920 (R. 103). Have traveled as a passenger on the Rock Island from Arkansas to Oklahoma and Illinois, and have returned from Chicago to Arkansas many times by way of the Rock Island Railway. Several times I made the trip from Memphis, Tennessee on Train 45 to Hot Springs. Have used and ridden in the cars used by white passengers and also I have ridden those used by colored passengers on the Rock Island, and I am familiar with the accommodation and facilities furnished by the Rock Island to both white passengers paying first-class fare and colored passengers paying first-class fare (R. 104). I always paid a first-class fare. The coach set aside for Negroes on the Rock Island Train No. 45, from Memphis to Hot Springs, was usually a coach next

to the baggage car and divided into two sections with poor accommodations as to cleanliness. One toilet and no washbowls, the one toilet was used by colored ladies and gentlemen.

In that part of the section where colored ladies were sitting, the train conductor would usually use four seats for his office (R. 105). In the part used as a smoker for men, the butcher would use part of that as a storehouse for his goods. Colored and white men were smoking in the part next to the colored ladies' compartment. There was only a little swinging door between the smoking compartment and the compartment occupied by colored ladies and gentlemen. The frequent passing through the swinging door would permit smoke to fill the compartment occupied by the colored ladies. I observed this happening quite often. In this compartment or Jim Crow car there was no soap, no running water, no hot and cold water, no water for flushing the toilet, prisoners were often carried in this compartment used for smoking (R. 105). The prisoners were both white and colored.

During the many years of travel on the Rock Island I have never seen any white or colored prisoners being carried in the coach set apart for white passengers, in the first-class accommodations furnished white persons holding first-class tickets (R. 106). There weren't any foot-rests in the Jim Crow car, no carpets on the floor, the cuspidors in the compartment used by colored ladies were usually very filthy. The accommodations furnished white passengers were usually very clean and well kept, covers on the back of the seats which were very comfortable, the upholstering was of green or red plush, there was plenty of running water, hot and cold water, clean towels, soap, clean washbowls (R. 107). Usually a whole coach was set aside for white passengers for smoking purposes of

white passengers holding coach tickets (R. 107). When I say coach tickets, I mean second-class tickets. The coaches were provided by the railroad company. I do not mean the Pullman cars. I have ridden on the Pullman cars on the Rock Island in the State of Arkansas, these Pullman cars are usually supplied with everything to make passengers comfortable (R. 108). The upholstering is first-class, first-class berths, soap, towels, washbowls and tables. There are observation cars and lounging compartments. I have purchased Pullman accommodations in Arkansas, if I went on the side used by white persons to purchase a ticket, and if I went on the side specified for colored persons to buy ticket the Rock Island ticket agent would refuse to sell me Pullman or first-class accommodations in the observation car belonging to the railroad company (R. 108). *The Rock Island agent told me on many occasions that he could not sell Pullman accommodations to Negroes. There would be Pullman cars and observation cars used by passengers holding first-class tickets, attached to the train with space unoccupied. But because I was colored I was refused the accommodations.* I always purchased first-class railway ticket and was financially able and willing to pay for the use of first-class accommodations and facilities. (Emphasis supplied.)

William Harrison, for the complainant, testified (R. 109): Lived in Chicago about nineteen years; had previously lived in Oklahoma. Have held various offices in Illinois and Oklahoma. Was assistant attorney general and member of the board of pardons and paroles in Illinois, and Special Judge in the State of Oklahoma. That he had traveled over the Rock Island System in the State of Arkansas, Oklahoma and as far west as the Pacific coast (R. 110). Prior to April 20, 1937, and subsequently to said date. That he was familiar with the accommodations

and facilities furnished by the Rock Island on Train 45, to colored and white passengers. He always paid for a first-class ticket (R. 110). He described the Jim Crow coach as being next to the baggage car with a smoker used for white coach passengers or second-class passengers as part of the same car. The toilet in the colored compartment of the car was used by both men and women as there was only one toilet. The upholstering was leather and part of the compartment called the Jim Crow car was used by the conductor and the news butcher, each occupying about two seats. This condition described by this witness existed from 1904 to 1916. Colored men smoked in the compartment where colored ladies were compelled to ride, sometimes there was a middle compartment where colored were permitted to smoke. The conductor, flagman and brakeman also smoked in the Jim Crow car (R. 111). The Jim Crow car was filthy; cuspidors were unseemly and emitted odor.

In coaches occupied by white passengers, riding on the same train there were clean covers on the seats and the car was well kept. The Jim Crow car was in no wise equal in point of comfort and convenience. This description was of Train No. 45, which ran from Memphis, Tennessee, through Little Rock, Arkansas, and on to Hot Springs. There were signs in the Jim Crow cars "For Colored Persons or For Negroes" (R. 112). There was no running water in the Jim Crow car with which to flush the single toilet. The first-class accommodations on Train No. 45 furnished to white passengers included the use of the Pullman cars, running water, clean towels, soap and clean washbowls (R. 112). The cuspidors were clean, the smoking room was kept clean. After purchasing a first-class ticket from the Rock Island ticket agent in Hot Springs, Arkansas, *I applied for Pullman accommodations*

for which I was financially able to pay and offered to pay, but the agent refused my application because I was colored (R. 114). (Emphasis supplied.)

I always bought a regular ticket before making application for Pullman accommodations from Hot Springs, Arkansas, to Chicago, Illinois (R. 113).

JOHN J. PULLEN, for complainant, testified he lived in 4314 Forestville Avenue, Chicago; had practiced medicine thirty-nine years, in Alabama, Tennessee and Arkansas (R. 115). Have lived in Chicago, about eighteen years. As a property owner in Hot Springs and Little Rock, Arkansas, he has frequently made trips on the Rock Island Railway (R. 81). Always paid a first-class fare and was familiar with the accommodations furnished to both white and colored passengers. Have used both accommodations on the various trips. In using the first-class accommodation furnished white passengers by the Rock Island, in Arkansas, I observed that the cars had running water in the toilets, soap, combs and brushes in some of the compartments and everything strictly modern (R. 116). This was the coach and chair cars furnished to white passengers. The Jim Crow car set apart for colored passengers contained very poor accommodations. There was no water to flush the toilets, no towels, no washbowls, most of the time, if there was a washbowl it would be covered with soot and cinders (R. 116-117). The Jim Crow car sometimes had one partition and sometimes two partitions. Parts of the Jim Crow car was used for smoking. I have observed drunken men of the white race being brought out of the car used by white passengers into the Jim Crow car where colored ladies were riding and the drunken men would heave all over the seats. The conductor and flagman also occupied seats in the compartment set apart for colored ladies and gentlemen.

I made a trip from Chicago to Hot Springs by way of Memphis and over the Rock Island lines, September, 1937, I found the conditions the same as I have described in relation to the accommodations furnished colored passengers and white passengers (R. 117-118). I paid first-class fare, but was compelled to accept second-class accommodations by the train conductor (R. 119). When I say first-class ticket or first-class fare, I mean the price I paid for the ticket was the three-cents-a-mile rate, the second-class ticket is what is commonly known as the two-cents-a-mile or coach ticket (R. 119-121).

ELIAS A. MORRIS, for the complainant, testified he lives at 4171 South Parkway, Chicago, have lived in Chicago sixteen years. I lived in Arkansas, before coming to Chicago, and was a federal employee (R. 121-122). Have returned to Arkansas from Chicago, by way of Memphis, Tennessee, several times since living in Chicago. I always purchase a first-class ticket (R. 122). Have ridden in both chair cars and sleepers from Chicago to Memphis. The Pullman cars are very well furnished, plush backs for the seats, a smoking room with a lavatory off from the smoking room and with proper necessities for keeping it clean. Running water, hot and cold water, towels, soap, carpets on the floor, porter service, berths, tables for use by passengers (R. 122-123). Sanitary, well lighted with all modern conveniences (R. 123). I have ridden in the car set apart for colored people on this Train No. 45 of the Rock Island, which leaves Memphis, about 8:30 each morning. It is a coach divided into, at least, two sections, one for colored passengers, the other for a smoking compartment, one lavatory in the colored compartment used by men and women, no soap, no towels or anything of that kind. I am describing the part of the Jim Crow car used by colored ladies. The washbowls were filthy, no hot or cold water

in the wash bowls (R. 123-124). The door between the part of the Jim Crow car used for smoking and that part occupied by colored ladies was frequently opened, and rolls of smoke would enter the part of the Jim Crow car in which colored ladies were riding. I saw signs "For Negroes or For Colored."

The sections of the Arkansas Statute providing for "The quality of Accommodations" was read in the record and may be quoted as follows (R. 127, 211-213):

> "SEC. 986. All railway companies carrying passengers in this State *shall provide equal,* but separate and sufficient accommodations for the whites and African races, by providing two or more passenger coaches for each train."

The provisions of the Arkansas Law concerning "Separate Sleeping and Chair Cars" provides (R. 127, 211):

> "SEC. 989. Carriers may haul sleeping or chair cars for the exclusive use of either the white or African Race separately, but not jointly."

Evidence on behalf of the defense.

ALBERT W. JONES, for the defense, testified on direct examination. I live at 711 East Sixth Street, Little Rock, Arkansas (R. 128). I am the railroad conductor employed by the Chicago, Rock Island Railroad Company. Have been running a passenger train for thirty-two years (R. 128). I have been in charge of the Rock Island passenger train between Memphis, Tennessee, and Hot Springs, Arkansas, for five or six years. And I had charge of Rock Island Train No. 45 at the time the complainant was put out of the Hot Springs Pullman car into the Jim Crow car (R. 129-130). Train No. 45 consists of a baggage car, combination coach, straight day coach, diner, sleeper and

parlor car (R. 130). The combination coach is next to the baggage car, the entire equipment is owned by the Rock Island except the Pullman sleeper. On April 1, 1937, I saw Congressman Mitchell in the sleeping car (R. 130-131). I received the railroad transportation from Congressman Mitchell while he was in the Pullman car and he had a dollar in his hand for the porter of the Pullman car. I asked him if he had a through sleeping car. He said, "No." I said: "Well, we can't accept your dollar, *unless the porter has a compartment* or *stateroom* that he can put you in." The porter said he did not have a compartment or stateroom and I said to Congressman Mitchell, "You will have to go to the colored car." He said: "They told me in Chicago, that I wouldn't have any trouble getting first-class accommodations for the entire trip." I said to him, "The law doesn't make any provisions for a Congressman, any more than it does for anybody else" (R. 131). The porter said: "He is Congressman Mitchell from Chicago." I said, "I can't do anything for you. I can't accept this Pullman fare, etc." The congressman walked into the Pullman and sat down, I think in Section 3. (Emphasis supplied.)

After I finished checking the berths and returned to where the congressman was, he asked me what I was going to do with his ticket. I said, "I will make a notation and you can get a refund of one cent per mile." He said, "I don't want your refund, I want the service." I said, *"I can't give you the service."* When I came back after working my parlor car the congressman had gone up in the other car. He was in the middle compartment, next to the ladies' toilet (R. 131). When I first saw the congressman I was about nine miles from Memphis, in the State of Arkansas. I rode in the colored end of the car from Forest City to Memphis, I mean from Forest City

to Little Rock, a distance of about eighty-seven miles (R. 131-132). It is 133 miles from Memphis, to Little Rock. The middle compartment is devoted and used by colored women, colored *men may use it,* but it is called the colored women's car. (Emphasis supplied.)

The car in which the congressman was riding was of solid steel with three partitions (R. 131). The front end is used for a colored smoker, the middle for colored men and women, the rear for a white smoker. There were three toilets one in each compartment. The only water toilet is the middle toilet (R. 133). Paper towels and a wash basin. The other two toilets do not flush, but are dry toilets. The toilet in the middle compartment is used by both colored men and women (R. 134). During the time I was in the Jim Crow car I did not detect any foul odors (R. 134). The colored car is cleaned and renovated at Memphis, but I do not know the nature of the cleaning. It looks clean and nice. The spittoons look clean and have some kind of disinfectant in them. I did not notice any dirt, peanuts, tobacco juice or anything else on the floor. There are leather seats with seat covers. And for the past five or six years, linen back covers have been used (R. 134-135). There is an electric fan in each compartment and ventilators that you pull open and close with a ventilating stick.

On this day, the incident happened, I maintained my office in the forward part of the colored car where I occupied two seats with my grip, tickets, envelopes and other working material (R. 135-136). There were about five or six colored passengers in that car (R. 136-137). The seating capacity in the two compartments devoted to colored passengers is about forty-two. There was no news butcher on that train. There were three coolers with ice-water. To the best of my knowledge there was ice-water in the

coolers (R. 137). In the thirty-two years of my experience I have handled about ten or twelve cases of this kind (R. 138). I mean, cases where I have put colored people out of the sleeping cars because they were colored, and had them occupy the Jim Crow car. Colored persons can't use the Pullman car on this train (R. 138). They may occupy a drawing room or compartment, but they can't ride in the body of the car.

In my conversation that morning with the congressman he was very gentlemanly (R. 143). He never went out of his way, never talked noisy, he was very nice. He did not use any insulting language, nor any abusive or profane language. His voice was not loud nor raucous (R. 143). The Pullman car came from Chicago, en route to Hot Springs.

If a white passenger desires to ride in the observation car, he must have a "three-cent-per-mile" ticket, or a first-class ticket as you call it (R. 158). And if the white passenger only has a "two-cent-per-mile" ticket or second-class ticket, he can only ride up in the half of the Jim Crow car. And cannot ride in the Pullman car (R. 158). *The only provision that the Rock Island has for carrying all colored passengers is in the part of the Jim Crow car.* A colored person who has a first-class ticket is compelled to ride in the Jim Crow car with all other colored persons who have second-class ticket or "two-cent-per-mile" tickets. A white person with a first-class ticket is entitled to use the Pullman, the diner and the observation car, which provide first-class accommodations (R. 158-159). *The Rock Island Railroad Company has no such first-class accommodation for Negroes, although the Negroes may have first-class tickets on the Rock Island Railway or "three-cent-per-mile" tickets. During the thirty-two years I have worked*

over there in Arkansas, for the Rock Island Railroad Company it has never had any first-class accommodations for Negroes (R. 159-160). And they haven't any first-class accommodations in the sleeping cars for Negroes now. (Emphasis supplied.)

The Rock Island Railroad Company does not at this time have any first-class accommodations for colored passengers paying the "three-cent-a-mile" fare permitting them to use the observation car which belongs to the Rock Island. They cannot use the dining car, nor sleeping car, although they may hold first-class tickets (R. 160).

On April 21, 1937, Congressman Mitchell had a "three-cents-per-mile" ticket, or what they call a "first-class" ticket (R. 161). There was plenty of room in the observation car on that day. I did not inform the congressman that he could ride in the observation car by paying the same additional fare of white persons holding first-class tickets (R. 161). The seat fare in the observation car from Memphis, to Hot Springs was ninety cents and the dollar which Congressman Mitchell had in his hand at the time he was ejected from the Pullman car would have been more than adequate to have paid for a seat in the observation car. The same fare is charged for a seat in the Pullman car from Memphis, to Hot Springs (R. 162).

Congressman Mitchell was sitting in Section 3 of the Pullman car alone (R. 162). I do not know if anyone occupied Section 3 from Memphis, to Hot Springs on April 21st, but whether the space had been sold or not, I would not have sold a seat, Section 3 or any other space in that Pullman car to Congressman Mitchell, *because he was a colored person.* I know he had a first-class interstate round-trip ticket from Chicago, Illinois, to Hot Springs, Arkansas (R. 163).

The accommodations furnished to Negro passengers in the Jim Crow car where Congressman Mitchell was compelled to ride are not equal to the accommodations furnished in the observation car by the Rock Island Railway to white passengers holding first-class tickets (R. 164-165). (Emphasis supplied.)

There is porter service furnished to the passengers in the observation car but no porter service furnished to the colored passengers in the Jim Crow cars (R. 165).

The Jim Crow car which all colored passengers were compelled to ride in in April, 1937, had three compartments (R. 165). There was no running water, no wash basins or towels. There were only paper towels furnished in the compartment of the Jim Crow car but linen and paper towels were furnished in the observation car (R. 165-166). There was only one toilet in the compartment where Congressman Mitchell was riding in the Jim Crow car, which was "for women." There was none for men who were riding in that compartment (R. 166). I never used for my office any seats in the white smoker. I used the seats in the colored compartment (R. 167). There is only a runner on the floor of the Jim Crow car now, while on the floor of the Pullman and observation car carpet is used to cover the entire floor (R. 168). In the Jim Crow car where Congressman Mitchell rode there were only leather seats. When I said that the Jim Crow car was "now in first-class condition" I meant that it was "clean" (R. 168).

I have never sold any colored person any space or accommodations in the Pullman car during my entire service. I inspected the toilet in the Jim Crow car at Memphis, but did not look in there at any time afterwards (R. 169). The toilet did not have any water to flush the hopper, from the time the train left Memphis until it reached the destina-

tion (R. 170-171). I stated on direct examination that I had no instructions from the Rock Island Company. But I had charge of the train as the conductor for the company and having charge of the train for the company I felt it was my duty to put the congressman out of the sleeping car into the Jim Crow car (Rec. 168). The congressman did complain and protest being put out of the Pullman car. He showed me his ticket and offered to pay for the accommodations. *But I told him he was a colored man and couldn't ride in those first-class accommodations. If there had been a white passenger with a first-class ticket who had boarded the train at Memphis, for Hot Springs, and had asked for a berth or a seat in that Pullman car, where there were vacant seats or had asked for a seat in the observation car, I would have sold it to him. I do not know how many colored people apply for Pullman tickets in Hot Springs, for Chicago, and are refused* (R. 71). (Emphasis supplied.)

If the compartments or stateroom are occupied, no colored person can ride in the body of the sleeping car. *No colored persons are allowed to ride in the observation car which belongs to the Rock Island,* even if they have first-class tickets. Those are the rules of the railway company and I follow the rules. I sell space on that train for seats in the observation car but would not sell a colored person any accommodations in the observation car, although he had a first-class ticket (R. 172). The white people and colored people are charged the same fare for the "three-cent-per-mile" ticket, or the "first-class" tickets (R. 173). There is no difference in the charge for the ticket because of color. The Pullman car is better equipped than the Jim Crow car. *If a white passenger with a first-class ticket was put out of the Jim Crow car he could receive the first-class accommodations of the Pullman car, and would not be compelled to purchase a compartment or a seat in the*

compartment. He could buy a seat in the Pullman car or observation car, or parlor car. The only requirement is, his having a first-class or "three-cents-per-mile" ticket (R. 173-174). *The day coach has no partitions and is occupied by white people who only have a second-class or "two-cents-per-mile" ticket. They have the entire car* (R. 174). Colored people cannot ride in that car, even if they have a first or second-class ticket. *All of the colored people who ride on my train must stay in the Jim Crow car, no matter what kind of a ticket they have.* We now have one partition in the Jim Crow car half for white and half for colored people. The colored men and women occupy the one compartment and if there is any smoking by the colored men or women it must be in that same compartment (R. 175). That is the only accommodation the Rock Island now has for colored people who pay first-class, or "three-cents-per-mile" fare (R. 176). (Emphasis supplied.)

The day coach used for white people has one toilet at each end, no smoking is allowed in this coach, there are plush seats, a runner on the floor and paper towels (R. 176). Only white people can go in the diner which is operated by the Rock Island, between Memphis and Hot Springs, on Trains 45-50 (R. 177).

If I was not the conductor and an employee of the Rock Island Railway I would not undertake the moving of colored people from one car of the train to the other (R. 178). Oh, I get what you mean now. No I meant, *I was enforcing the law, not the rules of the company. It is not the rules of the company. It is the law,* that I am enforcing, and not the rules of the company, because I have never had any instructions from anyone on the railroad as to just how to handle these cases, so that it was left up to me. (Emphasis supplied.) But as the conductor and in charge of the train, I consider that as one of my duties. When I

stated that there was smoking all over the train, I did not mean in the body of the Pullman car (R. 179). They do not allow any smoking in the body of the Pullman car (R. 179).

W. S. Scott, for the defense testified (R. 180): I live at 201 Mill Street, Malvern, Arkansas. In April, 1937, I was employed as brakeman on the Rock Island and assigned on Train 45 as the head brakeman. On April 21, 1937, I saw Congressman Mitchell in the middle compartment of the Jim Crow car on my train (R. 180). The train runs from Memphis to Little Rock, in two hours and forty-five minutes (R. 181). There was no running water in the toilets of the smoking end of the Jim Crow car used by colored passengers. And if the toilet was used it would stay dirty until the train reached Hot Springs, Arkansas. I don't know if they wash the toilets in Hot Springs or Little Rock or any other place (R. 184-185). They have a coach cleaner who goes through and cleans the inside of the coaches, but the toilets are not washed until they make the round-trip from Hot Springs to Memphis. I did not notice if the five or six men used the toilet or not (R. 185). I think there were two colored ladies sitting in the compartment with the congressman. As I walked through the train I opened the doors each time between the smoking ends and the middle compartment where the congressman was riding (R. 185-186). This was done every time the train stopped.

A. C. McGuire, for the defense, testified (R. 189): I live in Little Rock, Arkansas, and was employed in April, 1937, by the Rock Island Railway Company, as mechanical foreman at Memphis, Tennessee.

I do not do any of the cleaning of the cars myself (R. 194). The observation car on Train 45 of the Rock Island,

in April, 1937, had different kinds of carpet and washbowls than the Jim Crow car (R. 196). There were linen towels in the observation car, but only paper towels in the Jim Crow car (R. 197). There were different cuspidors than in the Jim Crow car (R. 198). In the observation car the chairs and seats are upholstered (R. 213). They have smoking stands, writing desks, a radio. The Jim Crow car has leather seats, while the observation car has plush seats and the observation car is intended to be more comfortable than the Jim Crow car (R. 200).

ARTHUR W. MITCHELL, complainant, testified (R. 202): I complained to Conductor Jones when I was being ejected from the first-class accommodations by him. I told him I was first-class passenger and entitled to first-class accommodations. He stated, *"There are no first-class accommodations for colored people on this train."*

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